

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID M. FRANKLIN,
Plaintiff,

v.

DENIS MCDONOUGH,
Defendant.

Case No. 21-cv-06328-VKD

**ORDER DISMISSING CASE
PURSUANT TO RULE 25**

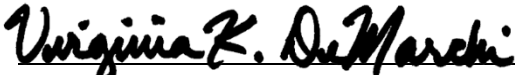
On June 22, 2022, defendant filed a “Notice of Apparent Death of Plaintiff,” stating that after the dismissal of this action for failure to prosecute, defendant learned that plaintiff David M. Franklin, who represented himself in this matter, likely passed away on February 27, 2022. Dkt. No. 45; *see also* Dkt. No. 47. The Court re-opened this matter to allow time for identification of and service upon an appropriate successor or representative for Mr. Franklin and the filing of a potential motion for substitution under Rule 25. Dkt. No. 46. On July 6, 2022, defense counsel filed a status report advising that he had been in contact with Mr. Franklin’s son, who identified himself as Mr. Franklin’s heir and successor, confirmed Mr. Franklin’s death, and stated that he likely would not seek to substitute into the present action. Dkt. No. 51. Defendant also filed a certificate of service indicating that Mr. Franklin’s son was personally served on June 29, 2022 with defendant’s Notice of Apparent Death of Plaintiff. Dkt. No. 51-2. On September 27, 2022, defendant filed a further status report stating that he has had no further contact with Mr. Franklin’s son and requesting dismissal of this action. Dkt. No. 54.

“If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor

1 or representative.” Fed. R. Civ. P. 25(a). “If the motion is not made within 90 days after service
2 of a statement noting the death, the action by or against the decedent must be dismissed.” *Id.* The
3 record reflects that the time for filing a motion for substitution has passed, and no such motion has
4 been made. Accordingly, this action is dismissed without prejudice pursuant to Rule 25. The
5 Clerk of Court shall close this file.

6 **IT IS SO ORDERED.**

7 Dated: October 5, 2022

8
9 
10 VIRGINIA K. DEMARCHI
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California